

EXHIBIT 1 - Affidavit of Ian Smith

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES,

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

vs.

WALKER RIVER IRRIGATION DISTRICT
a corporation, et al.,

Defendants.

IN EQUITY NO. C-125-MDD

Subproceeding:

3:73-CV-00127-MDD-WGC

HON. MIRANDA DU

Presiding Judge

NAME OF PARTY: The United States of America

DESCRIPTIVE SUMMARY: Fed. R. Civ. P. 56(c)(1) Verified Statement of Ian Smith

NUMBER OF PAGES: 3

DATE OF SERVICE: October 15, 2020

EXHIBIT 1 - VERIFIED STATEMENT OF IAN SMITH

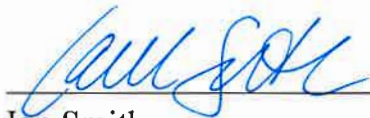
I, Ian Smith, state under oath:

1. I am a Principal Historian at Historical Research Associates, Inc. (HRA), in Missoula, Montana, where I have been employed as a professional historian since 2000. During the past two decades, I have completed research and provided historical analysis on several legal cases involving Native American land and water rights, as well as other issues, for federal, state, tribal, and private clients. I have also provided expert testimony in both federal and state court proceedings. See my attached CV for additional information about my background and experience.
2. As a historian, I and my HRA colleagues have been retained by the United States to collect true and correct copies of historical documents concerning the Walker

River Indian Reservation (and activities thereon) and, when necessary, to analyze those documents to discern their meaning in the context of related activities concerning the history of the Walker River Indian Reservation.

3. I hereby certify that I or my HRA colleagues have collected true and correct copies of the following documents from the locations identified. Each document has been previously disclosed to Principal Defendants with the corresponding bates numbers.
 - A. Transcript of Record Upon Appeal to the Ninth Circuit from the District Court of the United States for the District of Nevada, *United States v. Walker River Irrigation District*, 11 F. Supp. 158, 162 (D. Nev. 1935) (No. 8779)
 - i. Retrieved from: National Archives at San Francisco, California.
 - ii. Bates Number: US0035366
 - B. Letter from W. H. Code to J. R. Meskimons (Feb. 6, 1906)
 - i. Retrieved from: National Archives, Washington, D.C.
 - ii. Bates Number: US0005727
 - C. W. H. Code, Chief Engineer, U.S. Indian Inspection Service, to the Secretary of the Interior (July 7, 1906)
 - i. Retrieved from: National Archives, Washington, D.C.
 - ii. Bates Number: US0034274
 - D. Richard B. Millin, Regional Forester, to the Commissioner of Indian Affairs (June 16, 1938)
 - i. Retrieved from: National Archives at San Francisco, California.
 - ii. Bates Number: US0044644
 - E. [E. W. Kronquist], Walker River O&M Report (July 1937)
 - i. Retrieved from: National Archives at San Francisco, California.
 - ii. Bates Number: US0006968
 - F. Letter from W. M. Kearney, attorney for WRID, to Ethelbert Ward, Special Assistant Attorney General (Jan 12, 1934)
 - i. Retrieved from: National Archives, Washington, D.C.
 - ii. Bates Number: US0035222
 - G. Letter from W. M. Kearney to Ethelbert Ward (Sept. 12, 1934)
 - i. Retrieved from: National Archives, Washington, D.C.
 - ii. Bates Number: US0035287
 - H. Harold L. Ickes, [SOI], Federal Emergency Administrator of Public Works, January 16, 1939, in Appendix C, Brief for Appellees, *United States v. Walker River Irrigation District*, 11 F. Supp. 158, 162 (D. Nev. 1935) (No. 8779)
 - i. Retrieved from: National Archives at San Francisco, California.
 - ii. Bates Number: US0044648
 - I. Letter from Roy W. Stoddard to the Attorney General (Nov. 24, 1939)
 - i. Retrieved from: National Archives, Washington, D.C.

- ii. Bates Number: US0036570
 - J. Letter from Oscar L. Chapman to the Attorney General (Nov. 1, 1939)
 - i. Retrieved from: National Archives, Washington, D.C.
 - ii. Bates Number: US0036567
 - K. Letter from Roy W. Stoddard to the Attorney General (Jan. 11, 1940)
 - i. Retrieved from: National Archives, Washington, D.C.
 - ii. Bates Number: US0036583
 - L. Letter from Norman M. Littell to Roy Stoddard (Jan. 22, 1940)
 - i. Retrieved from: National Archives, Washington, D.C.
 - ii. Bates Number: US0036585
4. These documents are attached to Plaintiffs' Joint Motion for Summary Judgment as Exhibits 2-13.



Ian Smith



Title

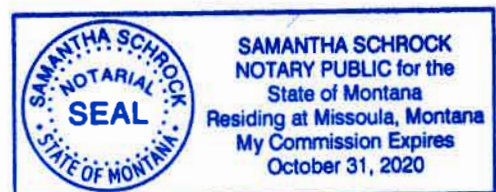
125 Bank Street, Suite 500
Missoula, MT 59802

Work Address

Subscribed and sworn before me this 14th day of October, 2020.

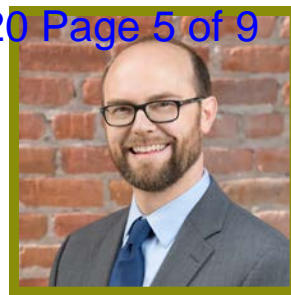

Notary Public

October 31, 2020
My Commission Expires





HISTORICAL
RESEARCH
ASSOCIATES, INC.



Ian Smith

Principal Historian & History Division Manager

Since joining HRA in 2000, Ian Smith has worked primarily on historical-legal studies related to Native American land and water rights, navigability of waterways, cleanup of contaminated sites, and land-use issues in the West. Now serving as HRA's History Division manager, Ian has extensive experience researching in a wide array of federal, state, and local archival repositories, as well as writing expert historical reports and providing expert witness testimony at trial and in deposition. Among the issues about which Ian has submitted expert reports and/or provided testimony in court proceedings are the water rights claims of the Coeur d'Alene Tribe and the Navajo Nation, rights-of-way on the Flathead Indian Reservation, taxation issues affecting the Tulalip Tribes, the alleged diminishment of the Red Lake Indian Reservation, and a First Amendment challenge against the U.S. Forest Service involving a Jesus statue on a ski resort in Montana. Ian provides his clients impeccably researched, meticulously sourced, and well-crafted histories on which they can rely in litigation.

Water Rights and Adjudications

U.S. v. Gila Valley Irrigation District (Globe Equity 59), Arizona

Principal historian and expert witness for a case involving the intent of the officials who negotiated the 1935 Globe Equity Decree with regard to the right of lower-priority water users in the Gila River Basin to pump groundwater in addition to their surface-water diversions. After completing research at the National Archives in Washington, D.C.; College Park, Maryland; and Riverside, California; and at the Arizona State Archives, HRA's principal historian submitted an expert report and anticipates providing deposition testimony in the ongoing court proceedings.

Little Colorado River Basin Adjudication, Arizona

Expert witness for the Navajo Nation in the Little Colorado River (LCR) Basin Adjudication in Arizona. Historical research and analysis for the case has related primarily to the Navajos' nineteenth-century use and occupancy of LCR Basin lands, the Navajo Reservation's expansion in the LCR Basin in the late 1800s and early 1900s, the partitioning of the 1882 Executive Order Reservation, and the federal government's water development activities in the LCR Basin.

Coeur d'Alene-Spokane River Basin Adjudication, Idaho

Senior historian and report author for the United States' water rights claims on behalf of the Coeur d'Alene Indian Tribe in the Coeur d'Alene-Spokane River Basin Adjudication (CSRBA). HRA's research and analysis related to the purposes for the creation of the Coeur d'Alene Indian Reservation in 1873 and the uses of water by tribal members both before and after the reservation's establishment. The attorneys in the case submitted HRA's reports to the court and relied on them to assist in the preparation of their legal briefs.

Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District

Senior historian and report author for a case involving the Agua Caliente Band's claim for *Winters*-based rights to groundwater on reservation lands near Palm Springs, California. HRA's research and analysis focused on the creation of the reservation in 1876-1877, the Tribe's pre-reservation uses of groundwater, and the subsequent patenting of lands to the Tribe in the early 1900s. Attorneys in the case relied on HRA's reports to assist in the preparation of their legal briefs before the U.S. District Court, which ruled in favor of the Tribe's water right claims. Both the Ninth Circuit Court of Appeals and the U.S. Supreme Court upheld the district court's ruling regarding the applicability of *Winters* to the Tribe's groundwater rights.

Education

MA, History, 2010,
University of Montana

BA, History and English
Literature, 1999,
University of Montana

Qualifications

Meets the Secretary of
the Interior's
Professional
Qualification Standards
in History

Professional Affiliations

National Council on
Public History

Montana Historical
Society

American Society for
Environmental History

American Historical
Association

<u>Klamath Basin General Stream Adjudication, Oregon</u>	Project historian and report author for a study of water rights filings in the Klamath River Basin Adjudication in Oregon. Most of the filings Ian analyzed dealt with alleged water rights based on the State of Oregon's issuance of Swamp Act deeds in the early 1880s. The attorneys relied on HRA's report and research while filing their exceptions to certain water rights claims.
<u>Water Rights in Montana Adjudication Basin 41-QJ</u>	Project historian and report co-author for a study involving the history of water rights and land patenting along Little Prickly Pear Creek in north-central Montana, within an area included in the 1855 boundaries of the Blackfeet Indian Reservation. The attorneys relied, in part, on HRA's report to gain a favorable settlement that protected tribal water rights in the region.
<u>Arizona v. California (Fort Yuma Indian Reservation Water Rights)</u>	Research historian and report co-author for a study analyzing whether an 1893 agreement had diminished the boundaries of the Fort Yuma Indian Reservation. Attorneys submitted HRA's report in federal court, and an HRA senior historian provided expert historical testimony in the litigation. HRA's report and testimony led, in part, to the court granting additional water rights to the Quechan Tribe under the landmark <i>Arizona v. California</i> lawsuit.

Native American Litigation

<u>CSKT v. Lake County (Flathead Reservation ROW)</u>	Principal historian and expert witness for a case involving the history of land ownership and road development in the Big Arm Townsite on the Flathead Indian Reservation. Established under a 1906 amendment to the Flathead Allotment Act, Big Arm was one of nearly two dozen townsites created under congressional authority within the reservation. In addition to analyzing the sale of town lots and the elimination of lands from the townsite, HRA investigated whether any historical evidence showed that county officials complied with federal and state rights-of-way laws that were in effect during the early 1900s. Ian submitted an expert report and provided deposition testimony in the case. In April 2020, the U.S. District Court ruled in favor of the Confederated Salish and Kootenai Tribes (CSKT), citing portions of Ian's report in the ruling.
<u>Tulalip Tribes v. State of Washington, et al.</u>	Expert witness and report author for a federal court case involving the taxation of Indian trust lands within Quil Ceda Village in the Tulalip Indian Reservation. The study required research and analysis of several federal statutes, as well as an examination of historical land uses within the present-day Quil Ceda Village. Ian provided deposition testimony in June 2017 and offered written trial testimony in May 2018 in federal court proceedings. Following an appeal to the Ninth Circuit, the parties agreed to settle the case via a sales-tax-revenue-sharing agreement that Washington Governor Jay Inslee signed into law in March 2020.
<u>U.S. v. Joseph Joshua Jackson (Red Lake Reservation Boundary Dispute)</u>	Expert witness and report author for a study of a 1905 law that authorized the sale of lands within the Red Lake Indian Reservation, Minnesota, to a railroad company. HRA's expert report analyzed both congressional intent and the historical circumstances surrounding the law's passage. After Ian provided expert testimony at a federal court hearing in Minnesota, judges in both the U.S. District Court and the Eighth Circuit relied on his report and testimony in their rulings in the case.
<u>Herrera v. Wyoming</u>	Senior historian for a case involving tribal off-reservation hunting rights on national forest lands in Wyoming, which were reserved under an 1868 treaty with the United States. Attorneys relied on HRA's research to assist in the preparation of their legal briefs, which they submitted to the U.S. Supreme Court.
<u>Mapping of CSKT Aboriginal Use Areas in Montana</u>	Project historian for a study involving the mapping and documentation of off-reservation use areas traditionally relied on by the Confederated Salish and Kootenai Tribes throughout the state of Montana. The project resulted in the creation of a GIS map linked to digitized copies of historical documents, which an expert witness used during his deposition testimony.

Southern Ute
Tribe's Off-
Reservation Use
Rights

Research historian and report co-author for a study of the Southern Ute Tribe's off-reservation hunting rights in southwestern Colorado. The report discussed tribal members' traditional subsistence activities in the so-called Brunot Area, as well as analyzing the rights reserved by the Tribe under an 1873 agreement opening these lands to non-Indians. The attorneys used HRA's report during negotiations with state officials to secure off-reservation hunting, fishing, and gathering rights for tribal members.

Environmental and Land Use Litigation

Freedom from
Religion
Foundation v.
Chip Weber, et al.

Expert witness and report author for a study involving the permitting, construction, uses, and local perceptions of a statue of Jesus that has been on the Whitefish Mountain Resort ski area in western Montana since the early 1950s. The U.S. District Court judge relied on Ian's expert report and testimony in his June 2013 decision in the case. In August 2015, the Ninth Circuit Court of Appeals upheld the district court's ruling.

Nevada Mines
Research,
Humboldt, Nye,
and Esmeralda
Counties, NV

Senior historian and project manager for an investigation of the potentially responsible parties (PRPs) at four mining sites in Nevada. In addition to completing an operational history of each site, HRA historians investigated the corporate connections between the historic operators at the four sites and any currently viable companies who may be liable for cleanup costs.

RS 2477 Rights-of-
Way Research,
Kane County,
Utah

Research historian and report co-author for a study of twelve alleged RS 2477 rights-of-way (ROWs) in Kane County, Utah. The study examined historical uses of the claimed ROWs and provided cartographic and photographic evidence of the existence (or non-existence) of the roads prior to 1976. The project included research at Bureau of Land Management (BLM) offices, the Utah State Archives, and university archives in Utah, as well as conducting field surveys of the ROWs in question.

U.S. v. Hage,
Monitor Valley,
Nevada

Project historian for a study of the history of ranching in south-central Nevada, with particular emphasis on the impacts of U.S. Forest Service administration and the 1934 Taylor Grazing Act. HRA's expert-witness report was filed with the court in the litigation.

Everett Smelter
PRP Research,
Everett,
Washington

Project historian for a study investigating the ownership and operational history of the Everett Smelter in Washington State. The project required land-title research, corporate-genealogy research, and a brief history of the smelter's operations.

Industrial Site PRP
Research, Port
Angeles,
Washington

Research historian and report author for a study of the history of industrial activities along Ediz Hook in Port Angeles, Washington. The project required research in city and county records, as well as records maintained by local historical societies and libraries. This research formed the basis for a narrative timeline detailing the industrial activities and corporate histories of the companies that historically operated along Ediz Hook.

Tri-State Mining
District Natural
Resource Damage
Allocation

Research historian for a study involving a natural resource damage allocation (NRDA) claim resulting from lead and zinc mining in the Missouri and Kansas portions of the Tri-State Mining District. The project included research at the Environmental Protection Agency (EPA) Region 7 offices in Kansas and several other archival repositories in Missouri and Kansas.

State of North Carolina v. Alcoa Power Generating, Inc.	Project historian for a study relating to the historic navigability of the Yadkin River in North Carolina, which was a central issue in litigation between the State of North Carolina and Alcoa Power Generating, Inc. Research included an in-depth review of late 1800s U.S. Army Corps of Engineers reports and maps, as well as reports issued by state agencies in the early 1900s.
Lower Clark Fork River Navigability Study, Western Montana	Research historian and report co-author for a study and assessment of the historic navigability of the Lower Clark Fork River in Montana. The report relied on primary and secondary sources, including U.S. Army Corps of Engineers' annual reports, historic newspapers, and local histories of the region, to evaluate whether that portion of the river was used as a navigable stream by settlers, commercial interests, and government officials.

Expert Witness Testimony

<i>CSKT v. Lake County, et al.</i> , U.S. District Court for Montana, Case 19-CV-90-DLC	Ian submitted an expert report and provided deposition testimony in this case involving the history of land ownership and road development in the Big Arm Townsite on the Flathead Indian Reservation. Established under a 1906 amendment to the Flathead Allotment Act, Big Arm was one of nearly two dozen townsites created under congressional authority within the reservation. In addition to analyzing the sale of town lots and the elimination of lands from the townsite, HRA investigated whether any historical evidence showed that county officials complied with federal and state rights-of-way laws that were in effect during the early 1900s. In April 2020, the U.S. District Court ruled in favor of CSKT, citing portions of HRA's report in the ruling.
<i>In Re Hopi HSR</i> , Case CV 6417-203, Little Colorado River (LCR) Adjudication, Apache County Superior Court, Arizona	Ian submitted an expert report and provided deposition testimony in this case, which is a sub-proceeding of the Little Colorado River (LCR) Basin Adjudication. Ian's testimony—offered at deposition in February 2018—pertained primarily to the historic use and occupancy of LCR Basin lands by Navajo tribal members. The case is currently pending before the Apache County Superior Court in Arizona.
<i>Tulalip Tribes v. State of Washington, et al.</i> , U.S. District Court, Western District of Washington, Case 15-CV-00940-BJR	Ian submitted an expert report, provided deposition testimony in June 2017, and offered written trial testimony in May 2018 in this case, which involved the taxation of commercial activities on Indian trust lands within the boundaries of the Tulalip Indian Reservation in the tribally chartered and federally recognized municipality of Quil Ceda Village. The U.S. District Court for the Western District of Washington in Seattle found in favor of the defendants in its October 2018 ruling. After appeal to the Ninth Circuit, the parties agreed to settle the case via a sales-tax-revenue-sharing agreement that Washington Governor Jay Inslee signed into law in March 2020.
<i>United States v. Joseph Joshua Jackson</i> , U.S. District Court for Minnesota, Case 10-151-DWF-LIB	Ian submitted an expert historical report and served as an expert witness at trial in this case, which pertained to the alleged diminishment of the Red Lake Indian Reservation under a 1905 law authorizing the sale of a tract of reservation land to a railroad company. Ian provided testimony at trial, on behalf of the United States, in federal court in August 2013. The U.S. District Court found in favor of the United States in May 2014, and the Eighth Circuit Court of Appeals upheld the district court's ruling in April 2017, citing Ian's report and testimony in the ruling.

*Freedom from
Religion Foundation
v. Chip Weber, et al.*,
U.S. District Court
for Montana, Case
CV-12-19-M-DLC

Ian submitted an expert historical report and served as an expert witness for this case relating to the history, uses, and local perceptions of a statue of Jesus that was placed on the Whitefish Mountain Resort ski area in western Montana in the early 1950s. Ian provided deposition testimony on behalf of the defendant (U.S. Forest Service) in October 2012. The U.S. District Court found in favor of the United States in June 2013, and the Ninth Circuit Court of Appeals upheld the lower court's ruling in August 2015.

Selected Publications

- 2019 Smith, Ian. Review of *American Indian History on Trial: Historical Expertise in Tribal Litigation*, by E. Richard Hart. *Utah Historical Quarterly* 87, no. 3 (Summer 2019): 256–58.
- 2019 Smith, Ian. Review of *Irrigation, Timber, and Hydropower: Negotiating Natural Resource Development on the Flathead Indian Reservation, 1904–1945*, by Garrit Voggeser. *Montana: The Magazine of Western History* 69, no. 1 (Spring 2019): 82–84.
- 2015 Greenwald, Emily, and Ian Smith. “Bury My Documents in Lenexa, Kansas: Expert Witness Work and the American Indian Records Repository.” *The Public Historian* 37, no. 1 (Feb. 2015): 39–45.
- 2010 Smith, Ian. “From Subsistence to Dependence: The Legacy of Reclamation and Allotment on Quechan Indian Lands, 1700-1940.” M.A. thesis, University of Montana, 2010.

Selected Presentations

- 2020 “Historians as Expert Witnesses: Consulting and Testifying,” American Historical Association, 134th Annual Meeting, January 2020.
- 2017 “A Case Study in Assimilation: Allotment and Fee-Patenting on the Flathead Indian Reservation, 1887–1934,” Montana History Conference, September 2017.
- 2016 “The Judge and the Historian,” National Council on Public History Annual Conference, Baltimore, Maryland, March 2016.
- 2015 “Bury My Documents in Lenexa, Kansas: Problems of Access and Accessibility at the American Indian Records Repository,” ILPC/TICA Indigenous Law Conference, Michigan State University College of Law, November 2015.
- 2005 “From Subsistence to Dependence: The Legacy of Reclamation and Allotment on the Fort Yuma Indian Reservation, 1890–1940,” American Society for Environmental History Annual Conference, Houston, Texas, March 2005.